COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 68/LM/Dec03

In the large merger between:

Vodacom Group (Pty) Ltd

and

Smartphone SP (Pty) Ltd, trading as Smartcall

Reasons for Decision

Approval

1. On 23 February 2004 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Vodacom Group (Pty) Ltd ("Vodacom") and Smartphone SP (Pty) Ltd, trading as Smartcall ("Smartcall") in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The Transaction

2. This transaction is an acquisition by Vodacom of 51% of the shares in Smartcall. The remaining shareholders will consist of the current management of Smartcall.

The Parties

3. The primary acquiring firm is Vodacom Group (Pty) Ltd, one of the three national cellular networks. Vodacom is also active in the downstream service provider market, through its wholly owned subsidiary, VSP (Pty) Ltd.

4. The primary target firm is Smartphone SP (Pty) Ltd, trading as Smartcall ("Smartcall"), which operates as a licensed and exclusive Vodacom service provider. Smartcall's shareholders are Globalcom Investments Ltd and a consortium consisting of the current management.[1]

Rationale for the Transaction

5. According to the parties the service provider industry is declining. The advent of and growth in pre-paid services has led to the demise of many service providers. On the other hand, Vodacom seeks to consolidate its service delivery channels. This transaction will result in Vodacom acquiring one of its licensed service providers.

Evaluating the merger

The Relevant Market

Product market

6. Vodacom is active in the upstream network market as well as in the downstream service provider market. Its wholly owned subsidiary, VSP (Pty) Ltd operates as a service provider by selling and distributing cellular handsets, cellular accessories, pre-paid products and cellular contracts.

7. Smartcall is also active in the service provider market. It is licensed by Vodacom and exclusively sells and distributes Vodacom products.

8. The Commission identified four possible product market definitions. The narrowest market definition is identified as the provision of services for the Vodacom network.

9. However, The Commission noted that the market definition question did not require a conclusive answer, since even the narrowest construction of the relevant market did not give rise to competition concerns.

Geographic market

10. Cellular telephony and related services are provided throughout South Africa. The relevant geographic market is therefore national.

Impact on competition

11. The transaction has both horizontal and vertical effects.

[1] The management consortium members are Mark Attieh, Grace Houlston, Leon Richards and Kevin Petzer.

Horizontal effect

12. In the downstream service provider market, the merger will lead to the amalgamation of Vodacom's integrated service provider, VSP (Pty) Ltd and Smartcall.

13. Since Smartcall deals exclusively in Vodacom products and services, the merger only affects only intra-brand competition.

14. The parties submit that intra-brand competition amongst the service providers has not been effective and that service providers have not been able to successfully establish their brands in the market place.[2]

15. In respect of contract services, the tariffs (approved by ICASA) and terms of the contracts are set by the cellular networks. Thus service providers have no product or pricing power. They compete primarily in terms of convenience to the customer and the packaging of the offer (handsets and discounted subscriptions). The service providers apply the discounts which they receive from the networks differently, though ultimately, the total packages offered to customers match each other.

16. In ***Vodacom (Pty) Ltd /GSM and Teljoy Holdings (Pty) Ltd*** the Tribunal held that

> *"the role of service providers is to provide the networks with a customer base. If the networks think they can do the job more efficiently they should be allowed to do so."*[3]

17. With regard to pre-paid products and services, competition takes place at the retail level where retailers such as Game, Clicks, Pick n Pay and others compete aggressively. The service providers are less involved in the pre-paid market.

18. Thus the parties submit that the transaction will not substantially lessen intra-brand competition between service providers.

Vertical effect

19. Vertically, the transaction sees Vodacom, in the upstream network market, consolidating further in the downstream service provider market.

20. Since Smartcall exclusively provides Vodacom services, this merger does not further Vodacom's ability to foreclose access to its rivals.

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[2] After the hearing this matter the Tribunal requested that the parties submit further information regarding intra-brand competition between service providers. The infomration provided forms part of the record.

[3] Case no. 10/LM/Nov99 at page 4.

Public interest issues

21. The parties submit that all Smartcall's current employees will be retained. Accordingly, the transaction will not impact negatively on employment.

Conclusion

22. We conclude that the merger will not lead to a substantial lessening of competition. The merger is therefore unconditionally approved.

_______________ 19 March 2004

D. Lewis Date

Concurring: N. Manoim, U. Bhoola.

For the merging parties:	Hofmeyr Herbstein & Gihwala Inc.
For the Commission:	Mr M. Worsley, Legal Services Division, assisted by Ms O. Strydom, Mergers Division, Competition Commission.